Court No.2

Civil Revision No. 412 of 2001
(Old No. 127/1994)

Surendra Bhadri ……. Plaintiff/
Revisionist.

Versus

Yatayat Evam Prayatan
Vikas Sahkari Sangh Ltd.
and two others. ……Defendants/
Respondents.

Hon'ble P.C.Verma, J.

This revision has been filed by the Plaintiff/revisionist challenging the order dated 20.8.1993 passed by the then District Judge, Tehri Garhwal, rejecting the application 82-A filed in Suit No. 40 of 1989 for amendment in the plaint for deletion of cetian land from the suit land and order dated 07.2.1994 passed on the application for recall of order dated 20.8.1993.

The reasons recorded by the learned District Judge for rejecting the application are that the said amdnement application was moved when the case property stood poised for finalization after settlement of issues and he further gave the following reasons:-

> "if certain property is deleted,
> There would be fresh suit brought against that deleted property. In such a situation then, when court fee about that property sought to be deleted stands already paid and the controversy is complicated one wherein decision in respect of one part would involve decision of other also, in my view, this application for recall should not be allowed. I, therefore, reject this application."

The reasons recorded as quoted above can not be the reasons refusing to amend the plaint

where the deletion of certain land from the suit was sought for. It is settled law that the amendment can only be refused when it changes the nature of the suit. In the present case, no finding has been recorded that if amendment application is allowed it will change the nature of the suit. Since the amendment sought was only for the deletion of certain land from the suit land, by allowing he amendment nature of the plaint was not to be changed. Moreso, it is the choice of the plaintiff to file a suit for land against which he has a cause of action. Deletion of the certain land shows that the plaintiff has no cause of action for that he wanted to delete the certain land from the suit land. Therefore, the amendment was permissible under law. The orders passed by the District Judge on 20.8.1993 and 07.2.1994 are hereby quashed. The amendment appli-Cation 82-A moved by the plaintiff in Original Suit No.40 of 1989 is allowed.

The revision is allowed accordingly.

Since the suit is of year 1989, the learned District Judge, Tehri Garhwal is directed to conclude the hearing of the suit within a period of six months from the date of production of certified copy of this order.

(P.C.Verma, J.)

26.11.2001
P.Singh